

# HB0044



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

**HB0044**

Introduced 1/19/2007, by Rep. Timothy L. Schmitz

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/115-4

from Ch. 38, par. 115-4

Amends the Code of Criminal Procedure of 1963. Provides that in all cases to be tried by jury in which the defendant is charged with first degree murder, the court shall inform the jury venire as to whether the State is seeking the death penalty on any first degree murder count.

LRB095 03676 RLC 23703 b

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is  
5 amended by changing Section 115-4 as follows:

6 (725 ILCS 5/115-4) (from Ch. 38, par. 115-4)

7 Sec. 115-4. Trial by Court and Jury.) (a) Questions of law  
8 shall be decided by the court and questions of fact by the  
9 jury.

10 (b) The jury shall consist of 12 members.

11 (c) Upon request the parties shall be furnished with a list  
12 of prospective jurors with their addresses if known.

13 (c-5) In all cases to be tried by jury in which the  
14 defendant is charged with first degree murder, the court shall  
15 inform the jury venire as to whether the State is seeking the  
16 death penalty on any first degree murder count.

17 (d) Each party may challenge jurors for cause. If a  
18 prospective juror has a physical impairment, the court shall  
19 consider such prospective juror's ability to perceive and  
20 appreciate the evidence when considering a challenge for cause.

21 (e) A defendant tried alone shall be allowed 20 peremptory  
22 challenges in a capital case, 10 in a case in which the  
23 punishment may be imprisonment in the penitentiary, and 5 in

1 all other cases; except that, in a single trial of more than  
2 one defendant, each defendant shall be allowed 12 peremptory  
3 challenges in a capital case, 6 in a case in which the  
4 punishment may be imprisonment in the penitentiary, and 3 in  
5 all other cases. If several charges against a defendant or  
6 defendants are consolidated for trial, each defendant shall be  
7 allowed peremptory challenges upon one charge only, which  
8 single charge shall be the charge against that defendant  
9 authorizing the greatest maximum penalty. The State shall be  
10 allowed the same number of peremptory challenges as all of the  
11 defendants.

12 (f) After examination by the court the jurors may be  
13 examined, passed upon, accepted and tendered by opposing  
14 counsel as provided by Supreme Court rules.

15 (g) After the jury is impaneled and sworn the court may  
16 direct the selection of 2 alternate jurors who shall take the  
17 same oath as the regular jurors. Each party shall have one  
18 additional peremptory challenge for each alternate juror. If  
19 before the final submission of a cause a member of the jury  
20 dies or is discharged he shall be replaced by an alternate  
21 juror in the order of selection.

22 (h) A trial by the court and jury shall be conducted in the  
23 presence of the defendant unless he waives the right to be  
24 present.

25 (i) After arguments of counsel the court shall instruct the  
26 jury as to the law.

1 (j) Unless the affirmative defense of insanity has been  
2 presented during the trial, the jury shall return a general  
3 verdict as to each offense charged. When the affirmative  
4 defense of insanity has been presented during the trial, the  
5 court shall provide the jury not only with general verdict  
6 forms but also with a special verdict form of not guilty by  
7 reason of insanity, as to each offense charged, and in such  
8 event the court shall separately instruct the jury that a  
9 special verdict of not guilty by reason of insanity may be  
10 returned instead of a general verdict but such special verdict  
11 requires a unanimous finding by the jury that the defendant  
12 committed the acts charged but at the time of the commission of  
13 those acts the defendant was insane. In the event of a verdict  
14 of not guilty by reason of insanity, a hearing shall be held  
15 pursuant to the Mental Health and Developmental Disabilities  
16 Code to determine whether the defendant is subject to  
17 involuntary admission. When the affirmative defense of  
18 insanity has been presented during the trial, the court, where  
19 warranted by the evidence, shall also provide the jury with a  
20 special verdict form of guilty but mentally ill, as to each  
21 offense charged and shall separately instruct the jury that a  
22 special verdict of guilty but mentally ill may be returned  
23 instead of a general verdict, but that such special verdict  
24 requires a unanimous finding by the jury that: (1) the State  
25 has proven beyond a reasonable doubt that the defendant is  
26 guilty of the offense charged; and (2) the defendant has failed

1 to prove his insanity as required in subsection (b) of Section  
2 3-2 of the Criminal Code of 1961, as amended, and subsections  
3 (a), (b) and (e) of Section 6-2 of the Criminal Code of 1961,  
4 as amended; and (3) the defendant has proven by a preponderance  
5 of the evidence that he was mentally ill, as defined in  
6 subsections (c) and (d) of Section 6-2 of the Criminal Code of  
7 1961, as amended, at the time of the offense.

8 (k) When, at the close of the State's evidence or at the  
9 close of all of the evidence, the evidence is insufficient to  
10 support a finding or verdict of guilty the court may and on  
11 motion of the defendant shall make a finding or direct the jury  
12 to return a verdict of not guilty, enter a judgment of  
13 acquittal and discharge the defendant.

14 (l) When the jury retires to consider its verdict an  
15 officer of the court shall be appointed to keep them together  
16 and to prevent conversation between the jurors and others;  
17 however, if any juror is deaf, the jury may be accompanied by  
18 and may communicate with a court-appointed interpreter during  
19 its deliberations. Upon agreement between the State and  
20 defendant or his counsel the jury may seal and deliver its  
21 verdict to the clerk of the court, separate, and then return  
22 such verdict in open court at its next session.

23 (m) In the trial of a capital or other offense, any juror  
24 who is a member of a panel or jury which has been impaneled and  
25 sworn as a panel or as a jury shall be permitted to separate  
26 from other such jurors during every period of adjournment to a

1 later day, until final submission of the cause to the jury for  
2 determination, except that no such separation shall be  
3 permitted in any trial after the court, upon motion by the  
4 defendant or the State or upon its own motion, finds a  
5 probability that prejudice to the defendant or to the State  
6 will result from such separation.

7 (n) The members of the jury shall be entitled to take notes  
8 during the trial, and the sheriff of the county in which the  
9 jury is sitting shall provide them with writing materials for  
10 this purpose. Such notes shall remain confidential, and shall  
11 be destroyed by the sheriff after the verdict has been returned  
12 or a mistrial declared.

13 (o) A defendant tried by the court and jury shall only be  
14 found guilty, guilty but mentally ill, not guilty or not guilty  
15 by reason of insanity, upon the unanimous verdict of the jury.

16 (Source: P.A. 86-392.)